

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

T. A. No. 260/7 OF 2012

Cuttack, this the 19th day of December, 2018

CORAM

HON'BLE MR. G.C. PATI, MEMBER (A)

HON'BLE MR. S. K. MISHRA, MEMBER(J)

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Smt. Malli Patra, aged about 47 years wife of Sri Rabindra Nath Patra at present working as Assistant Accounts Officer, in the Office of the Divisional Engineer Telecom, Survey and Advanced Project Division, Bharat Sanchar Nigam Ltd. Keonjhar, at Post/Dist-: Keonjhar.

...Applicant

(By the Advocate- M/s. G. Rath, S.N. Misra, T. K. Prahary, S. Rath, A.K.Mohanty)

-VERSUS-

Union of India Represented through

1. The Director, HRD, Bharat Sanchar Nigam Ltd, B-148, States man House, Barakhamba Road, New Delhi-110001.
2. The Chief General Manager, Eastern Telecom Project, Bharat Sanchar Nigam Ltd., 2/5 A Judges' Court Road, Kolkata-700027.
3. The Dy. General Manager, Microwave projects, BSNL, Sahid Nagar, Bhubaneswar-751007.

...Respondents

(By the Advocate- M/s. S.B. Jena)

ORDER

S. K. MISHRA, MEMBER (J):

Aggrieved by her supersession in the matter of promotion as Accounts Officer, the applicant had earlier approached the Hon'ble High Court of Orissa in W.P. (C) No.10925 of 2006. Vide order dated 09.12.2011

of the Hon'ble High Court, the aforesaid Writ Application was transferred to this Tribunal and re-numbered as T.A.No.7 of 2012. In this Transferred Application, the applicant has prayed for the following reliefs:

"...to allow the petition and to issue Rule NISI calling upon the opposite parties to show cause:

Why the petitioners should not be promoted to the post of Accounts Officer from the post of Asst. Accounts Office from the date her junior has been promoted i.e., from 15.3.2005 with all consequential benefits of seniority and emoluments etc.

AND

Why the orders of the BSNL corporate office letters dated 23.6.2005(As per Annexure-4) will not be quashed.

AND

If, the Opposite Parties fail to show cause and/or fail to submit sufficient show cause, the rule may kindly be made absolute.

AND

The Hon'ble Court may kindly be pleased to issue any other writ or writs, direction or directions as it deems fit and proper in the interest of justice, equity and fair play".

2. Brief facts of the case are that the applicant belongs to Scheduled Caste category. She had joined as Telecom Office Assistant in the erstwhile Department of Telecommunications on 14.6.1983. Consequent upon her passing the P&T Junior Accounts Officer's Examination, she was promoted as Junior Accounts Officer (JAO) on regular basis w.e.f. 30.09.1997. She was thereafter promoted as Assistant Accounts Officer (AAO) on regular basis

in Bharat Sanchar Nigam Ltd. with effect from 1.4.2001 and continued to work there. In July, 2004, DPC met and considered the cases for promotion to the post of Accounts Officer. The applicant could come to know that in the process, DPC did not consider her case for promotion although juniors to her have been promoted as Accounts Officer. Being aggrieved, the applicant submitted a representation to the Director (Finance), BSNL on 15.03.2005 and in response to this, she was intimated vide letter dated 23.6.2005 that her case was considered by the DPC held on 1.7.2004, but could not be acceded to as per Para 6.1.4 in Chapter 53 "promotions" by Swamy's Establishment and Administration. The applicant thereafter submitted another representation dated 16.8.2005 by stating that as per the provision of Rule-174(12) of P&T Manual, Vol.III, all adverse entries in the confidential report of Government servants should have been communicated. In response to this, the applicant was intimated vide letter dated 27.9.2005 that the representation as preferred need not be forwarded to the Director (HRD). Hence, this application with the prayer as mentioned above.

3. Contesting the claim of the applicant, the respondents have filed their counter. According to respondents, applicant's performance during the years 2003-04 and 2004-05 was not upto the satisfaction for which in the confidential records, the reporting officer has remarked her performance

as "Average". Hence, the respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the learned counsels for both the sides and perused the materials available on record. From the pleadings of the parties, the short point to be decided in this case is whether the applicant ought to have been communicated with the remark "Average" as given by the Reporting Officer during the years 2003-04 and 2004-05. In this connection, we have gone through the extract of Para 174 (12) of P&T Manual, Vol.II which reads as follows:

"(12) Adverse remarks whether they relate to remediable or irreparable defects should be immediately communicated to the officer concerned by the countersigning authority when one is prescribed and by the reporting officer in other cases. Only such of the adverse entries as are expected by the countersigning authority, if any, need be communicated. The countersigning authority should therefore, normally indicate whether it agrees or disagree with the remarks of the reporting officer. It should also record additional remarks, wherever necessary, if the report is too brief, cryptic or vague. Along with the adverse entry, the substance of the entries report including what may have been stated in praise of the officer should also be communicated. The improvements made in respect of the defects mentioned in the earlier report should also be communicated to the officer in a suitable form. A copy of the letter communicating the adverse remarks duly acknowledged by the official concerned should be kept in the C.R. file and the fact of communication of the entries

should be recorded in the report itself by the authority communicating same”.

5. Relying on the above Rules, it is the contention of the Respondents that the remarks “Average” not being adverse, necessarily was not communicated to the applicant.

6. On the other hand, learned counsel for the applicant has placed reliance on the decision of the Hon’ble Supreme Court in *Dev Dutt vs. Union of India & Ors.* [2008 (8) SCC 725]. In this connection, the observations made by the Hon’ble Supreme Court in Paragraphs-39 & 40 of the said judgment are as follows:

“39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules and government orders”.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned

authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible”.

7. Further, in Paragraph-45, the Hon’ble Supreme Court held as under:

“45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of [Article 14](#) of the Constitution.

8. We have considered the rival submissions vis-a-vis the rules and instructions as well as the decision of the Hon’ble Supreme Court in Dev Dutt case (supra). Having regard to the decision of the Hon’ble Supreme Court, we are of the opinion that the applicant in the instant case ought to have been communicated with the entries made in her CR for the years 2003-04 and 2004-05 to enable her to make representation, if any, against the remarks given in her CRs. In view of this, the action of the respondents cannot be said to be above board. We, therefore, direct the respondents to

communicate the entries made in the CR of the applicant for the years 2003-04 and 2004-05 within a period of two months from the date of receipt of this order and on receipt of the same, if the applicant makes any representation within a period of two weeks, the same shall be considered and decided by an authority higher to the Reporting Officer. However, if the CRs of the applicant is upgraded, she shall be considered for promotion retrospectively by convening a review DPC within a period of three months thereafter and if the applicant is so promoted, she should be given the consequential benefits.

9. With the aforesaid direction, this T.A. is allowed. No costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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